

## Executive Summary

Released in 2019, President Andry Rajoelina's Plan d'Emergence (PEM) is the Government of Madagascar's blueprint for the country's economic revival. The Rajoelina administration has made investment into infrastructure, rooting out corruption, improving the investment climate, and growing exports the centerpiece of its growth strategy. Fifteen months into his tenure, in accordance with the President's results-oriented approach to governing, the Government of Madagascar (GOM) has moved to implement these PEM promises. Nevertheless, concerns remain over the uneven nature of the anti-corruption initiatives and a lack of transparency in awarding contracts and signing agreements.

COVID-19 has thrown all economic estimates into disarray. After four years of steady growth, economic growth is expected to flat-line or decline into negative territory in 2020. Sharp declines in exports, layoffs, factory closures, and order cancellations for Malagasy products are causing major economic disruptions in the short to medium term. Experts expect economic activity will pick up closer to the last quarter of 2020. But this turmoil also presents opportunities for those who are looking to invest. As the GOM targets new foreign direct investment (FDI) with renewed enthusiasm, opportunities for investments and partnerships in infrastructure, textiles, energy, tourism, agri-business, mining, health and other sectors are opening up.

The GOM's actions on new investment legislation and enforcement bear watching. A new investment law is already in the works (slated for late 2020) and the amendments to the mining code are still pending. Since improvements in transportation infrastructure and reliable supply of water and electricity are key to Madagascar's future growth prospects, the GOM's ability to keep these various sector projects moving forward will also be a good indicator of the state of play. With rising public expenditure and shrinking revenue, Madagascar will need extended donor support and private sector participation in order to ride out the COVID-19 storm.

*Table 1: Key Metrics and Rankings*

Measure	Year	Index/Rank	Website Address
<b>TI Corruption Perceptions Index</b>	2019	158 of 190 (score 24/100)	<a href="http://www.transparency.org/research/cpi/overview">http://www.transparency.org/research/cpi/overview</a>
<b>World Bank's Doing Business Report</b>	2019	161 of 190	<a href="http://www.doingbusiness.org/en/rankings">http://www.doingbusiness.org/en/rankings</a>
<b>Global Innovation Index</b>	2019	121 of 129	<a href="https://www.globalinnovationindex.org/analysis-indicator">https://www.globalinnovationindex.org/analysis-indicator</a>

<b>U.S. FDI in partner country (\$M USD, historical stock positions)</b>	2018	N/A	<a href="http://www.bea.gov/international/factsheet/">http://www.bea.gov/international/factsheet/</a>
<b>World Bank GNI per capita</b>	2018	USD 510	<a href="http://data.worldbank.org/indicator/NY.GNP.PC.AP.CD">http://data.worldbank.org/indicator/NY.GNP.PC.AP.CD</a>

## 1. Openness To, and Restrictions Upon, Foreign Investment

### Policies Towards Foreign Direct Investment

The Rajoelina government's PEM strategy stresses the importance of attracting foreign direct investment (FDI) to achieve its ambitious economic growth goals. Since the Rajoelina administration took office in January 2019, the GOM has gone to great lengths to promote Madagascar as an attractive investment destination. High-level delegations have fanned out across Africa, Europe, and Asia to make the case while also organizing well-known trade shows in Madagascar.

In accordance with the President's result-oriented approach to governing, the administration moved swiftly on their signature promises – infrastructure investment and improvements particularly in the transportation and energy sectors and fighting corruption. Nevertheless, the business community is hesitant about the uneven nature of the anti-corruption initiatives and the lack of transparency in awarding contracts and signing agreements. The GOM's review and subsequent renegotiation of existing energy contracts supplying electricity to the national water and electricity utility (JIRAMA) unsettled investors in the sector, but with costs at double the levels from the rest of Africa, some industry experts understood it was essential get JIRAMA's balance sheet under control. The World Bank has urged the GOM to renegotiate its existing energy contracts as part of its support program. The GOM drafted amendments to the mining code in late 2019 which included several provisions on ownership and taxes that infuriated investors and interest groups and forced a return to the drafting table. The GOM is still in discussions about these amendments with mine operators.

While the GOM is actively seeking FDI and increased participation from the Malagasy private sector, the business community points to poor transportation infrastructure, expensive but unreliable supply of electricity and water, endemic corruption, and weak enforcement of rules and regulations as impediments to investment, foreign or domestic.

The existing investment law allows foreign ownership of businesses and does not discriminate against foreign-owned enterprises. There is no legal requirement that citizens own shares of foreign investment, nor any restriction on the mobility of foreign investors. The regime for visas, residence, and work permits is neither discriminatory nor excessively onerous. A new version of

the law is being drafted and is expected to clarify access to land and address issues of corporate social responsibility and sustainability.

The Economic Development Board of Madagascar (EDBM), an investment promotion agency, has several objectives - to strengthen the competitiveness of the Malagasy private sector, to increase FDI, to develop and recommend business incentives for private investments in Madagascar, and to provide a one-stop shop to help investors set up or expand their business through tailored services by specialized advisors.

Madagascar accommodates investment retention and maintains an ongoing dialogue with investors through various vehicles including roadshows to targeted countries, formal sectoral business roundtables and platforms, participation in well-known worldwide trade and economic shows, and ombudsman services.

### **Limits on Foreign Control and Right to Private Ownership and Establishment**

Broadly speaking, there are no general, economy-wide limits on foreign ownership or control. Any individual or legal entity, domestic or foreign, is free to invest and operate, in accordance with the laws and regulations.

Foreign and domestic private entities are free to establish and own their business enterprises and engage in all forms of remunerative activities. Except for the telecommunication sector, where foreign ownership is restricted to 66 percent, foreign investors can retain full ownership of their company and repatriate their earnings without restriction. Certain strategic sectors such as banking, insurance, mining, oil and gas, medical, and pharmaceuticals have extra regulatory provisions which apply to all investors, foreign and domestic.

There is no official discrimination against foreign investors, who are treated on par with local investors, although foreign investors have reported delays in getting permits and problems finding their way through Madagascar's convoluted bureaucracy.

Madagascar has no formalized investment screening mechanism for inbound foreign investment. Economic Development Board of Madagascar (EDBM) does conduct a review which is submitted to the licensing authority and final ratification of foreign investment has to be completed by the President's Office.

### **Other Investment Policy Reviews**

In the past three years, the government has not undergone any third-party investment policy reviews (IPRs) through a multilateral organization such as the OECD, WTO, or UNCTAD.

### **Business Facilitation**

In 2006, Madagascar set up the Economic Development Board of Madagascar (EDBM), a one-stop shop for receiving, processing, and delivering the required administrative documents to speed up the approval of all investment projects. Its primary recommendation is for a foreign company seeking to start a business in Madagascar to consider collaborating with a local business. Post recommends the retention of competent local counsel. It is almost impossible to register a business in Madagascar without permanent residence or resolve difficulties without local contacts. Many foreign companies seek local partners in order to ease their introduction to the market and make new contacts.

Madagascar ranks 80 out of 190 for ease of starting a business in the World Bank's 2019 Doing Business rankings. EDBM handles business registrations, which takes on average one to two weeks after receipt of complete documentation and is amongst the shortest in Sub-Saharan Africa. They assist both local and foreign investors in registering and operating their businesses. At the EDBM one-stop shop, companies can obtain their statistical (business identification) cards, tax registration confirmations, commercial registration numbers, and apply for visas, work permits or professional cards. They must also register for social security and health insurance. Companies in Madagascar are free to open and maintain bank accounts in foreign currency. EDBM is currently building an online registration service which should shorten the registration timeline further and provide more clarity on the rules for investment.<sup>i</sup> The website for registration is: [www.edbm.mg](http://www.edbm.mg)

## **Outward Investment**

The GOM does not offer incentives to promote outward investment. However, many wealthy entrepreneurs have diversified their investment base by investing in Europe, the United States, Mauritius, and the Middle East in particular.

There are no restrictions on capital outflows from Madagascar to the rest of the world but companies and individuals must fill out a form showing the reasons for the transfers. Domestic investors who invest abroad must comply with the foreign currency control mechanism enforced at the state and commercial bank level with close monitoring by the Finance Ministry.

## **2. Bilateral Investment and Taxation Treaties**

Madagascar does not have a separate free trade agreement or a bilateral investment treaty (BIT) with the United States but benefits tremendously from customs duty exemptions under the Generalized System of Preferences (GSP) and AGOA, to the point that the United States is now its biggest export market. The Malagasy government has expressed interest in negotiating a bilateral investment treaty with the United States. Initial BIT discussions began in late 2008, but stalled due to 2009 coup, which also cost Madagascar its AGOA eligibility for a five-year period which ended in 2014.

Madagascar is a member of the Common Market for Eastern and Southern Africa (COMESA), with which the United States has an agreement to develop trade and investment relations. In

2017, Madagascar signed the Tripartite Free Trade Agreement (TFFA) associating the East African Community (EAC), COMESA, and Southern African Development Community (SADC). Madagascar is one of the signatories to the African Continental Free Trade Area (AfCFTA), which will come into force once all 55 African countries ratify the free trade area.

According to the U.N. Conference on Trade and Development (UNCTAD), Madagascar has concluded nine BITs (Belgium-Luxemburg-Economic Union, China, France, Germany, Mauritius, Norway, South Africa, Sweden, and Switzerland), and five treaties with investment provisions (COMESA EU EPA, COMESA Investment Agreement, COMESA US TIFA, Cotonou Agreement, COMESA Treaty).

Madagascar does not have a bilateral taxation treaty with the United States but has concluded agreements/treaties with France, Mauritius, Canada (2017), and Morocco (2016). As a member of the African, Caribbean, and Pacific group (ACP), Madagascar signed the APEi (interim Economic Partnership Agreement) with the EU in January 2013 to have easy access to the EU market and obtain progressive tariff reductions. The United Nations Conference on Trade and Development (UNCTAD) cites four known treaty-based Investor-State Dispute Settlement (ISDS) cases concerning Madagascar against De Sutter and others-Belgium (2); Courts-Mauritius; LTME & Madamobil-Mauritius.<sup>ii</sup>

### **3. Legal Regime**

#### **Transparency of the Regulatory System**

Bureaucratic delays and inefficiencies plague Madagascar's legal and regulatory system. Non-transparent regulatory decisions have affected global investors who alleged unfair competition or lack of transparency. High-level corruption and alleged collusion between business and political elites have been a recurring issue in Madagascar for decades. Its auditing and financial information reporting systems are transparent and consistent with international norms, IAS and IFRS respectively. Although the regulations strive to establish clear rules, a lack of enforcement combined with shortage of resources and capacity hinder their efficacy. In addition, certain investment policies are not harmonized and, in some areas, can be contradictory. A policy harmonization process for Special Economic Zones is underway.

Madagascar has municipal, regional, national and international laws; the most relevant for foreign businesses would be national and international laws.

Depending on the circumstances, regulations can be suggested, drafted, or amended by various actors such as government or its institutions, business associations, academics, civil society organizations, and/or individual experts. Non-governmental organizations, industry associations and private organizations such as the American Chamber of Commerce, can also be influential voices in raising concerns about new legislation or regulations. For instance, the Chamber of

Mines has had an important role in pushing back against the Rajoelina government's proposed amendments to the mining code which would have discouraged further investment in the sector.

If the GOM decides to move ahead with a bill, it is transmitted to the National Assembly and then the Senate for study and voting. It may go forth and back between them. Once the bill passes in both Chambers, it goes to the High Constitutional Court (HCC) for constitutional verification. Finally, the President has the ultimate right to proclaim or deny a proposed law. The President also has the right to enact a proposed law by decree if Parliament does not pass the legislation, though it is still subject to constitutionality checks by the HCC. Laws are published by their insertion in the Official Gazette of the Republic or its broadcast on national radio or TV in case of emergency.

Scientific, data-driven assessments, and quantitative analysis are not yet common practice. Regulatory reviews usually take place when a non-governmental organization or interest group protests against a new or amended regulation. Though public comments are welcomed and recorded in a registry before consideration and processing, there is no set mechanism which makes them available to the public. There is also no formal mechanism in place to make draft bills or regulations available for public comment or public consultation prior to their adoption. This applies to investment law and regulations as well. Informally, draft legislation and regulations do circulate and institutional pushback can lead to further changes as was the case with the revision of the mining code, where the circulation of draft bills led to protests from interest groups. As a result, the government withdrew the drafts for further consultation and review.

There is no centralized location for publication of draft regulatory actions. Once enacted, the full text of key regulatory actions is published on the Justice Ministry's website through the link to the National Center of Legal and Legislative Information and Documentation (CNLEGIS). [http://www.cnlegis.gov.mg/page\\_find\\_direct\\_mots/](http://www.cnlegis.gov.mg/page_find_direct_mots/).

The regulatory enforcement mechanisms are usually defined along with the enactment decree of each regulation. The enforcement process may be legally reviewed. Anyone can lodge a complaint with the administrative courts, which are responsible for judging failure to comply with administrative regulations. The Council of State is at the apex of the administrative order and is responsible for ensuring the legality of the GOM's actions and oversight of lower courts. It also handles appeals for annulment of actions by local and regional authorities. The HCC verifies the conformity of laws with the Constitution of the Republic of Madagascar.

Since the last ICS report, while several regulatory changes including enforcement reforms have been announced, there have been no reforms relating to foreign investors. One of the changes is the appointment of the Integrity Safeguarding Committee (CSI), which has been tasked with the development of the national integrity system (NIS) to ensure the coordination, monitoring, and

evaluation of the anti-corruption system; and elaborating and implementing the national good governance policy. In general, the reforms carried out improve the economy, governance, land tenure, and the rule of law, although sometimes they make the administration more cumbersome and complex.

Accounting regulations appear transparent. The country has no stock market, and therefore, no publicly listed companies.

Budget proposals, enacted budgets, and audited end-of-year reports are publicly available. The timing of their release often hampers public debate; for instance, budget proposals are usually published just two weeks before they are voted on. The enacted budget is often not available until many weeks into the start of the fiscal year.

Income and expenditure are not truly representative of the governments revenues and expenses. Income calculations exclude fees and royalties from the mining sector, while expenditure does not break out the transfers and subsidies to state-owned enterprises. The interim audit for the 2018-19 budget noted issues with fiscal transparency where the government changed beneficiaries and/or amounts allocated by the initial appropriation without further parliamentary approval. Government contracts are not fully transparent as to their funding arrangements. The 2019-20 budget also had a set-aside under Sovereign Funds, amounting to 1.9 percent of the budget earmarked for discretionary use under special presidential projects.

Debt obligations are not fully transparent. For example, the rate of return and the subscribers of non-market treasury bills (called “special TB”) are not readily available to the public.

### **International Regulatory Considerations**

Madagascar is a member country of the following economic blocks: Indian Ocean Commission (IOC), Southern African Development Community (SADC), Common Market for Eastern and Southern Africa (COMESA), and the Continental African Free Trade Area (ZLECA). The regional regulatory systems prevail over the national system in case of trade disputes amongst members.

As a former French colony, most of the norms and standards in force are French, although other international norms are increasingly in use as the country’s trade relationships become more diversified.

Madagascar is a member of WTO and the GOM has committed to notify all draft technical regulations to the WTO Committee on Technical Barriers to Trade (TBT).

### **Legal System and Judicial Independence**

French civil law largely inspires Madagascar's legal code, which contains protections of private property and rights.

The civil court system has its own independent jurisdiction, where civil and commercial cases are heard. The country's written commercial law consists mainly of the code of commerce and annexed laws. Recent reforms of commercial regulations and procedures have halved processing times for commercial cases at the Trade Court. Major cities and regions do have their own competent courts, although some trials fall under the jurisdiction of the central courts.

Madagascar's constitution provides for an independent judiciary. However, there is often flagrant interference by the executive branch in judicial matters, particularly through the appointment of compliant judges. Bribery and corruption are also factors affecting the fairness of the judicial process.

Regulations or enforcement actions are appealable within the prescribed time and are adjudicated in the national court system established in the capital city Antananarivo.

### **Laws and Regulations on Foreign Direct Investment**

The country's investment law was promulgated in January 2008 and governs foreign direct investment as well. In addition to the freedom of investment and equality of treatment for foreign and national investors, Madagascar's investment law includes articles on the protection of patent rights and protections against expropriation, freedom to transfer funds abroad without prior authorization, and a stability clause guaranteeing investor privileges from future legal or regulatory measures.

Major laws, regulations, and judicial decisions which have come out in the past year are:

- Law n°2018-043 dated February 13, 2019 against money laundering and financing of terrorism acts
- Law n°2018-042 dated January 17, 2019 authorizing the ratification of the loan agreement to finance the "integrated poles of growth and project (PIC 2.2)" between the government and the International Development Association (IDA)
- Law n°2018-039 dated January 7, 2019 authorizing the ratification of the statutes of the "Eastern and Western Africa Bank for Commerce and Development or Trade and Development Bank (TDB)"

| EDBM is Madagascar's one-stop-shop for investment and its website [www.edbm.mg](http://www.edbm.mg) provides summaries of relevant laws, rules, procedures, and reporting requirements for investors as well as links to the relevant laws. Comprehensive details are found on the Ministry of Justice website at [cnlegis.gov.mg](http://cnlegis.gov.mg)

EDBM has links to relevant laws and reporting requirements for investors.

- Law n°2007-036 on investment
- Law n°2007-037 on export processing zone
- Laws n°2001-031 and n°2005-022 on large mining investment
- Law n°1996-108 on petroleum, code
- Law n°2003-036 on commercial company

The following laws enacted in the last five years, also relate to foreign investment.

- Law n°2015-039 on Public and Private Partnership (PPP)
- Law n°2017-047 on Madagascar's Industrial Development which is reflecting the Industrial Policy (LDI)
- Law n°2017-023 on Madagascar's Special Economic Zone (SEZ)
- Law n°2017-020 on Madagascar's Electricity Law
- The e-commerce and digital activity law has been adopted but is still awaiting its enforcement decree

### **Competition and Anti-Trust Laws**

The Ministry of Commerce and Industry has the overall responsibility to ensure fair competition between businesses. The 2018 law on competition and anti-trust issues attempts to give teeth to the independent Competition Council (CC) which rules on unfair competition cases; the CC has the power to assess proportionate penalties for abuses of dominant market position. However, the CC is largely unfunded.

### **Expropriation and Compensation**

The investment law provides protection to foreign and local investors against nationalization, expropriation, and requisition, with the exception of public interest cases as established by regulations. For infrastructure projects which require expropriation of private property, the GOM must issue an official proclamation that defines the public interest of the project and the owner of the private property must be paid the fair market value of the concerned property prior to its expropriation. The government may also legally expropriate property when a judicial ruling permits it in cases where there is proven money laundering, profiting from trafficking, acts of terrorism, or a failure to make tax or debt payments.

Recent expropriations have taken place as described above. For instance, a well-known businesswoman recently had her new four-star hotel located near Antananarivo international airport expropriated after a court ruling against her for tax evasion. Court procedures included evidence presented by the Directorate General of Taxes and the Directorate General of Customs.

There were cases where asset owners alleged a lack of due process. In the case noted above, the businesswoman claimed she was victimized due to political bias.

### **Dispute Settlement**

### *ICSID Convention and New York Convention*

Madagascar is a member state to the International Centre for the Settlement of Investment Disputes (ICSID) and under the Investment Law, disputes between foreign investors and the administration can be resolved through arbitration proceedings administered by the ICSID. In case a foreign investor initiates the proceeding, he/she can decide to file the dispute at the Madagascar Trade Court, which is the country's competent jurisdiction in such matters. However, no specific domestic legislation provides for enforcement of awards under the New York Convention and/or under the ICSID Convention.

### *Investor-State Dispute Settlement*

As a signatory to the convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention), Madagascar also accepts international arbitration as means of resolving investment disputes. Based on the obligation of the New York convention, domestic courts should recognize and be willing to enforce foreign arbitral awards. International arbitration is accepted as a way of settling commercial disputes between private parties. Madagascar has also been a member of the Multilateral Investment Guarantee Agency (MIGA) since 1989.

Investment disputes involving foreign investors over the last 10 years include:

- 1) A Cypriot holding company affiliated with a U.S. Energy company is the claimant in a business dispute with its partners, including a Malagasy business. The claimant has filed for arbitration in New York. The partnership sells electricity to state-owned energy company JIRAMA and in 2019 was in discussions with the GOM about the terms of its Power Purchase Agreement. Following the election of President Rajoelina in December 2018, the Energy Ministry has sought to renegotiate all contracts signed by previous governments. The Claimant raised objections to the reopening of its contract, which had been signed by a previous government for a term of 20 years. JIRAMA also owed the claimant overdue payments, but was reportedly making them in a piecemeal fashion as of early 2020. Embassy Antananarivo continues to follow developments in this case.
- 2) In 2019, the Paris Commercial Court ordered Madagascar's state-owned airline company Air Madagascar to pay \$20 million to Air France in connection with the leasing of two A340s in 2011.
- 3) In 2016, an international power producer (IPPs) supplying electricity to Antananarivo, complained of non-payment by the national utility JIRAMA, a state-owned enterprise. After weeks of negotiations combined with threats to withdraw by the IPP, the government agreed to pay the IPP using a different payment mechanism.
- 4) In 2012, the government shut down the telecommunication operator "Life," a Mauritius controlled company, without providing evidence of substantial wrong doing. The company sought compensation and sued the Malagasy government at ICSID in August 2017 but there has been no resolution.

Madagascar does not have a history of extrajudicial action against foreign investors since the 1970s. However, enforcement by local courts of foreign arbitral awards against the government is uncommon. In the case of Air France, the GOM has not yet paid the fines ordered by the Paris Commercial Court. As far as Post is aware, none of Madagascar's commercial courts have taken up this verdict.

### *International Commercial Arbitration and Foreign Courts*

Two types of alternative dispute resolution (ADR) mechanisms are available in Madagascar, namely “arbitration” and “mediation.” Arbitration is a contractual jurisdictional mode of settlement of commercial disputes. The procedure involves submitting a dispute between two or more parties to the jurisdiction of an arbitral tribunal consisting of a sole arbitrator or three arbitrators.

Mediation is a structured process in which two or more parties to a dispute voluntarily attempt to reach an agreement on the resolution of their dispute with the assistance of a mediator, who is a neutral, impartial, and independent third party.

Both procedures are recognized by law. Arbitration results in an enforceable title in the form of an arbitral award, whereas mediation results in an agreement between the parties that does not constitute an enforceable title.

A privately managed entity named Center for Arbitration and Mediation of Madagascar (CAMM), created in 2001 and then restructured in 2012, promotes and oversees ADR mechanisms to resolve international and domestic commercial disputes and lessen reliance on an overburdened court system. The CAMM helps companies manage their conflicts, determine the best way to settle them quickly and durably, and helps ensure the security of their investments and the maintenance of business continuity. As a result, many private contracts now include arbitration provisions that allow the CAMM to mediate eventual disputes.

Since the 8<sup>th</sup> Economic Forum of the Indian Ocean Islands in 2012, CAMM has initiated a process with its counterparts in Reunion, Mauritius, and Comoros for the setting up of a cross-border dispute resolution platform in which co-mediation will play an important role. CAMM recognizes and enforces arbitral awards in that sub-region. However, only the commercial judgements of these foreign courts are recognized and enforceable under the CAMM.

CAMM only applies in disputes amongst private parties and so has no jurisdiction in disputes involving SOEs. In the latter case, it is tried in civil court. While the SOE does not always win, the judgement is not always enforced.

### **Bankruptcy Regulations**

In 2019, Madagascar ranked 161 among 190 in the World Bank’s Ease of Doing Business survey and it ranks 135 for the “resolving insolvency” criteria. The bankruptcy law, which was last updated in 2014, lays out collective debt settlement procedures, which treat all parties equally in bankruptcy proceedings. Creditors have the right to initiate insolvency proceedings only when

seeking liquidation of the debtor, but not when seeking reorganization. Bankruptcy is no longer a criminal offense, but is punishable by fines and imprisonment depending on whether it is deemed simple, negligent, or fraudulent bankruptcy. The court system has reduced the associated prison sentences from those stipulated in the previous insolvency framework.

There are three procedures that apply when assessing the fate of a company in difficulty. The first - preventive settlement - is a reconciliation procedure designed to avoid the suspension of payments or the cessation of activity of a firm in difficulty which has not yet defaulted on payments. This procedure, which is non-contentious, requires the agreement of all parties and aims to reach an agreement on the settlement of debts and avoid individual lawsuits.

The two other procedures - receivership and liquidation of assets – are intended to remedy payment defaults and correspond to the current judicial settlement and bankruptcy procedures. Some of the provisions include the appointment of a receiver, who is a representative of the creditors, by the Commercial Court to supervise the debtor who continues to manage the business. While a compensation agreement is being negotiated, all claims are frozen; the compensation to creditors may be on unequal terms and sale of the business is subject to a transfer plan.

## **4. Industrial Policies**

### **Investment Incentives**

Madagascar extends certain incentives for investment, outlined in domestic legislation, particularly in the Export Processing Zones (EPZ), in large mining investment (LGIM), and recently in the law on Special Economic Zones (SEZ), and the law on Industrial Investment Zones (ZII).

Madagascar's investment law, which encourages private investment, is based on the principle of freedom - freedom of investment for all nationalities and all sectors; freedom to transfer profits, dividends, salaries and savings; and freedom to recruit and dismiss foreign employees. Foreign investors may freely hold up to 100% of the shares (except for telecommunications where foreign shares are limited to 66%) in the company. Free zones and companies exporting at least 95 percent of production are exempt from customs duties and VAT for a 2 to 15-year period depending on the sector and then pay a 10 percent rate on inputs. An amendment to the investment law is expected to address questions about access to land for foreigners, environmental protections, sustainability, and corporate social responsibility, while strengthening sanctions against those who break the rules.

Other regulations provide more indirect incentives for FDI, such as the one governing self-generation of electricity. All companies which carry out self-generation of electricity, and use at least 70% of the electricity produced for their own purposes, can sell the remainder subject to conditions determined by the regulator. The General Tax Code (CGI) provides exemptions from taxes for the import and sale of inputs for exclusively agricultural use, agricultural materials and equipment and materials and equipment for the production of renewable energy. The law on

Large Mining Investments (LGIM) governs investments exceeding \$25 million and complements the mining code.

As part of the PEM, the Rajoelina government is committed to infrastructure projects, with the aid of public-private partnerships (PPPs). It includes several ambitious infrastructure projects in the telecommunications sector, with the installation of more than 12,000 km of fiber optic network and more than 14,000 km of Hertzian networks. In the energy sector, the PEM includes four projects for the construction of hydroelectric power plants, which would generate more than 700 MW in total over the next five years. The PEM also envisions the creation of special economic zones, including a zone specializing in the textile industry (an integrated industrial zone of + 1600 acres); other multi-sector industrial and service zones; and exclusive agricultural promotion zones. The special economic zones provide a secure mechanism for access to land.

The GOM does not normally issue guarantees or jointly finance foreign direct investment projects. Usually, for infrastructure projects, the government generally offers incentives in the form of provision of land, establishment of leases, tax incentives, transfer of benefits and revenues, and social integration of the project.

### **Foreign Trade Zones/Free Ports/Trade Facilitation**

The 2008 Law on Free Zone Companies established an Export Processing Zone regime to incentivize investment in three categories: (1) investment in export-oriented manufacturing industries; (2) development or management of industrial free zones; and (3) provision of services to EPZ companies. The EPZ regime provides certain tax advantages and incentives to EPZ companies, to include: temporary tax exemptions of two to fifteen years (depending on the category of enterprise); no VAT or customs duties on imports of raw materials; no registration taxes; no customs tax on exported goods; income tax on repatriation not exceeding 30 percent of the taxable basis; and free access to foreign currency deposited in the company's foreign currency bank account. Free zone companies are exempted from income tax in the first five years of operation. From the sixth year of operation, the income tax rate is 10 percent. These incentives are conditioned upon a performance guarantee and require 95 percent of an EPZ company's output be exported. More than 225 companies currently benefit from this incentive regime, 46 percent of which are in the textile sector.

Madagascar ratified the trade facilitation agreement (TFA) in June 2016. It has established its trade facilitation roadmap, a short but comprehensive document laying down a strategic vision for implementing trade facilitation reforms within a defined period (3 to 5 years). Donors have funded several capacity building and technical assistance workshops for Malagasy government officials to enable the effective implementation and enforcement of the TFA. Implementation is in its early stages at this point.

### **Performance and Data Localization Requirements**

The government encourages local employment and capacity building but does not mandate it. EDBM has enhanced the mobility of foreign investors and their employees by streamlining processes for business visas, residency, and work permits.

Some regulations, including the LGIM, prioritize the hiring of local staff over foreigners at the senior management level so long as they have equivalent skills.

Obtaining an official approval (“agrément”) is mandatory for any FDI. EDBM assists the investor with the application process and Madagascar’s Council of Ministers decides on the grant of “agrément” based on EDBM’s written guidance. The Council’s assent must then be signed off by the President.

Madagascar has no “forced localization” policy which would force foreign investors to use domestic content or technology. However, the government recommends transfer of technology and continuous capacity building to enhance business competitiveness. There are no measures in place that prevent or unduly impede companies from freely transmitting customer or business-related data outside Madagascar’s territory. There is no requirement for foreign IT providers to turn over source code and/or provide access to encryption. Post is not aware of any mechanism to enforce rules on local data storage within the country.

Madagascar does not enforce performance requirements but there are investment incentives (described earlier) that apply uniformly and systematically to both domestic and foreign investors.

## **5. Protection of Property Rights**

### **Real Property**

Madagascar ranked 164 on the World Bank’s 2019 Doing Business survey in registering property. Property rights and interests are poorly respected because of widespread corruption in the Domain and Topography Department and a lack of material and technological resources. Mortgages and liens are used in commerce and business to guarantee commercial loans. However, the registration system is cumbersome, complicated and unreliable.

Upon independence, Madagascar continued the land tenure policies of the French colonial administration with the presumption of state ownership of all land and the central government being the sole provider of legitimate land titles. However, due to the length and cost of the procedures for registering land, together with the remoteness of the authorities, customary practices for recognition of property rights prevailed at the local level. Recognition of property rights at this local level entailed the use of non-uniform, handwritten titles. The Land Title Office in Antananarivo is the only place to obtain an official title whenever a locally registered business wants to acquire a large parcel of government land. Registering a land title or transfer remains difficult, costly, and time-consuming for those outside the capital.

When the Land Ownership Act was amended in 2005, more than 90% of the occupants did not have a land title. The situation has not improved significantly despite several efforts financed by traditional donors. In 2005, with the support of a Millennium Challenge Corporation Compact, the government embarked on a land reform project to simplify the registration process and to reconcile the existing formal and informal land titles. The reform reversed the presumption of state ownership of land and introduced private ownership, while at the same time decentralizing land registration and recognizing/formalizing the existing local customs for social recognition of property rights. The 2009 political crisis disrupted this reform process, leaving the country with approximately 10 percent of its existing land plots formally titled.

The majority of land ownership disputes are resolved at the local level without recourse to judicial proceedings. The small percentage of disputes that go through the court system remain bogged down due to the complexity of the cases and the lack of clear evidence of ownership, and even when determinations are made, they are often not adequately enforced.

The investment law authorizes foreign investors to possess real estate through renewable 99-year leases, so long as the concerned property is used exclusively and continuously to carry out commercial activity. The regulation specifically prohibits the acquisition of land by investors for resale in its original state, or for sale after its development. The amendment to the investment law slated for later in 2020 is expected to further clarify access to land for foreigners.

In principle, if a property is legally purchased but unoccupied, property ownership stays with the legal owner even if squatters take over the land. In practice, due to corruption and lack of oversight, there have reportedly been instances of fraudulent transfer of property rights. The national land policy (PNF) that the GOM developed in 2016 has done little to correct the situation due to slow enforcement.<sup>iii</sup>

## **Intellectual Property Rights**

The “Office Malgache des Propriétés Industrielles (OMAPI),” Madagascar’s intellectual property rights authority was created in December 1992. OMAPI publishes the titles it grants in the Official Gazette of Industrial Property (GOPI) and provides the public with industrial property documentation such as patent documents, industrial property legislation in various countries, and multilateral treaties on industrial property. The “Office Malgache des Droits d’Auteurs (OMDA),” is Madagascar’s agency to protect authors’ rights and copyrights. OMDA’s mission is to ensure the exclusive protection, defense and management of the economic interests of Malagasy and foreign authors, performers, and their successors concerning the use of scientific, literary and artistic works.

Officially, these authorities protect against IP infringement, but in reality, enforcement capacity is quite limited due to resource constraints including poor digitalization, weakness of the judicial system, and lack of awareness of intellectual property rights among businesses and consumers. Due to these constraints, international investors have faced difficulties defending their interests.

Madagascar neither tracks nor reports seizures of counterfeit goods, which are easily available in local markets as are unauthorized copies of famous brands, songs, and videos.

New IP laws have stalled for years due to inaction by Parliament and the Office of the Prime Minister. The proposed legislation incorporates The Hague (international registration of industrial designs), and Lisbon (protection of origin appellation and international registration) agreements, and other international treaty classifications. The adoption of these bills would substantially improve the IP rights in Madagascar, provided OMAPI has sufficient funding for enforcement.

Despite Madagascar's challenges with IP rights enforcement, it is not listed in USTR's Special 301 report, which highlights online and physical markets that engage in and facilitate substantial copyright piracy and trademark counterfeiting. Madagascar is also not listed on USTR's notorious market report which targets countries where large-scale intellectual property rights infringement takes place.

## **6. Financial Sector**

### **Capital Markets and Portfolio Investment**

Madagascar has neither a stock market nor a competitive and transparent bond market, so portfolio investment opportunities are extremely limited. Foreign investment in government debt is limited to Malagasy nationals and legal residents.

There are no restrictions on payments and transfers for international currency transactions per IMF Article VIII. The Central Bank and the Ministry of Finance require documents prior to any transfer of currency to foreign countries. There is no ceiling imposed on international transactions but justification remains mandatory.

The private sector has access to a variety of credit instruments. Credit is allocated on market terms and can be offered either in local or foreign currency. Credit obtained in local currency is often more expensive than foreign currency due to inflation and lack of competition.

The Central Bank does not impose direct caps on loans but instead uses indirect tools to limit credit, such as imposing reserve requirement ratios (13 percent of deposits). Foreign investors are able to get credit on the local market if they have an officially registered company/subsidiary located in the country.

### **Money and Banking System**

Madagascar's banking penetration rate is very low. Only 12 percent of the population has a bank account, which includes accounts with microfinance institutions. Less than three percent of the population has access to commercial bank loans, and there are just 97.3 deposit accounts per 1000 adults.

There are only eleven commercial banks in Madagascar. As rates are high and competition low, banking activities are very profitable. Loans and credit to the private sector represent 57% of bank assets whereas loans (including TB) to the government represent 17%. Non-performing loans accounted for 7% of overall loans and credit in 2018.

Overall assets of all commercial banks were \$2.9 billion or 20.7% of GDP as of December 2018.

Madagascar has a central bank system. Its main objectives are to ensure the stability of the local currency internally (acceptable inflation rate) and externally (acceptable fluctuation of the exchange rate). The Central Bank has no clear mandate to promote economic growth. There is no inter-bank lending system in place.

Only one of eleven operating commercial banks is local. The other ten are subsidiaries of French, Moroccan, Gabonese, and Mauritian banks and are subject to prudential measures imposed by the CSBF or Banking and Financial Supervision Committee. Madagascar has not lost any correspondent banking relationships in the past three years nor are any currently in jeopardy.

Foreigners having legal residency status in the country can establish a bank account in either local or major foreign currencies (USD and Euro).

## **Foreign Exchange and Remittances**

### *Foreign Exchange*

Foreign investors do not face restrictions or limitations in converting, transferring, or repatriating funds associated with an investment. However, the monetary authorities and the Ministry of Economy and Finance require traceability of capital inflows and outflows. Funds can be freely converted into major foreign currencies.

Madagascar adopted a managed floating exchange rate system in 1994. The exchange rate fluctuates but the Central Bank intervenes to prevent abrupt depreciation or appreciation of the Ariary. In general, the Central Bank of Madagascar keeps the value of the Ariary fluctuating in a two percent range. The COVID-19 pandemic and resulting decline in Malagasy exports has resulted in over 5% depreciation in the value of the Ariary during the first four months of 2020.

### *Remittance Policies*

There are no recent changes or plans to change investment remittance policies. There are no restrictions on converting or transferring funds associated with foreign investment, including remittances of investment capital, earnings, loan repayments, and lease payments. There are also no time limitations on remittances.

## **Sovereign Wealth Funds**

Madagascar does not have a Sovereign Wealth Fund that manages national savings for investment purposes.

## **7. State-Owned Enterprises**

The government has shares in 53 companies, with a majority stake in 27 enterprises; in 11 cases, the government owns over 95 percent of the entity. Detailed information about state-owned companies (SOEs) is not easy to come by but they operate in many key sectors such as aviation, public utility (running water and electricity), ports, hotels, insurance, finance, woodworking, mining, maintenance and construction of ships, and real estate. The government has minority shares in three major banks, the beverage industry, oil distribution, and mining activities. The two most well-known SOEs are JIRAMA (100 percent state-owned), the water and electricity utility, and Air Madagascar whose equity tie-up with France's Air Austral is in the process of unraveling. The GOM has spent substantial amounts subsidizing the operations of both of these entities. Improvement in the governance and a return to profitability of SOEs is a long-standing condition for future assistance by multilateral donor institutions such as the World Bank and the IMF.

In theory, private enterprises are, on the whole, allowed to compete with SOEs under the same terms and conditions for market access, credit, and other business operations. The reality is somewhat different. State-owned enterprises dominate the sectors they operate in and stifle competition. For instance, in the airline industry, Air Madagascar offers unreliable service and charges high fares but faces little competition domestically or regionally since the GOM has restricted access to flight routes for other airlines. Any investor seeking to compete with an SOE in Madagascar should consider not only market-entry difficulties but also its ability to compete for scarce resources and permits.

The published list of SOEs can be found at:

<http://www.tresorpublic.mg/tresorpublic/download.php?path=wp-content/themes/tresor-public/statik-content/tresor-public/temp/statistique/dof/&file=ste.xlsx>

## **Privatization Program**

The 2004 law on privatization prohibits the Government from owning more than 50 percent of a privatized company. The fledgling privatization program initiated before 2009 has given way to more government control as reflected by the GOM's recent moves to increase what it calls "the production share of the government" in the mining sector.

In the past, foreign investors participated actively in these privatization programs. Almost all state-owned banks were purchased by foreign investors including foreign state-owned banks.

Currently, the GOM does not have a privatization program on its agenda.

## **8. Responsible Business Conduct**

Overall, Responsible Business Conduct (RBC) has not been a priority for the business community or for the GOM. The GOM does not have a dedicated policy on RBC at present. But this is changing as the new investment law currently being drafted is expected to incorporate RBC standards. Large corporations including multinationals in the mining sector, local conglomerates, commercial banks, and sizable international service firms proactively comply with universal RBC standards in reference to governance, environmental concerns, and corporate social responsibility. The National Environment Office (ONE) does require environmental impact assessments to be conducted.

The government enforces labor, employment rights, and consumer and environmental protections in part through periodic inspections, though a lack of resources and capacity, as well as continued corruption at lower levels, impedes the effectiveness of this enforcement. The government does not waive these requirements in order to attract foreign investment, except for some particular exemptions to its labor code provided to EPZ companies. Many companies with foreign investors, particularly from western countries, are moving gradually to international standards through their participation in voluntary certification schemes, such as the Worldwide Responsible Accredited Production (WRAP) principles in the apparel sector. There is also a vibrant NGO and civil society community, particularly regarding environmental issues, but they also suffer from lack of resources and capacity.

The U.S. Department of Labor report on the worst forms of child labor includes the exploitation of child labor in Madagascar's production of vanilla, sapphires, and precious stones. In November 2019, an international NGO also exposed the use of child labor in mica mining in the southern part of the country. The government has made moderate advancement in efforts to eliminate the worst forms of child labor, with assistance from international donors.

In 2018, after accusations by an international NGO, the Rio Tinto subsidiary QIT Minerals Madagascar (QMM) confirmed they had breached a buffer zone between their ilmenite mining operation in the south of Madagascar and a sensitive wetland. The breach, which took place in late 2014, is in violation of Malagasy law and conservationists fear risks of uranium-enriched tailings entering a lake that local people use for drinking water. The Office of Environmental Compliance (ONE) inspected the breach in 2018 and declined to take action. In August 2019, following further complaints by NGOs on the lack of transparency in ONE's actions, the Minister of Environment promised to investigate further.

Poor and slow enforcement of domestic laws relating to human rights, labor rights, consumer protection, environmental protections, and other laws/regulations fail to protect individuals from adverse business impacts. NGOs, unions, business associations and other entities have been very active in raising awareness of RBC particularly in relation to environmental protection, child labor, and human rights but are not always effective and achievements are uneven. There have been some notable advances in the campaign against sexual harassment and discrimination based on gender and religion. Child labor is an ongoing issue in several sectors. Harassment of activists, particularly on the environment side, has dropped off in the last year.

The GOM encourages adherence to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals, but has no similar domestic measures requiring supply chain due diligence.

Madagascar is a member of the Extractive Industries Transparency Initiative (EITI), under the Mining Ministry. In 2019, EITI's international office suspended Madagascar for the second time in 10 years following significant delays in the publication of the 2017 and 2018 reports. They mandated the GOM implement 15 corrective measures and undergo a double validation process before readmission. Disagreements on policy direction and funding led to the resignation of the Executive Secretary of EITI Madagascar in 2019, following which the GOM published the two long delayed reports. EITI International announced in December 2019 that Madagascar had provided documentation of implementation of the fifteen corrective measures required by EITI and its impact.

There are no laws or domestic transparency measures mandating the disclosure of payments for projects related to the commercial development of mines and hydrocarbon resources.

## **9. Corruption**

While giving or accepting a bribe is a criminal act and is subject to trial by court, corruption is an ongoing issue at all levels in Madagascar. No sector is immune, but it is most pervasive when dealing with the judiciary, police, tax, customs, land, and the mining industry.

Madagascar's anti-corruption legislation, updated in 2016, mandated the establishment of the Independent Anticorruption Office (BIANCO) and the Committee for Safeguarding Integrity (CSI). BIANCO enforces the anti-corruption law while CSI monitors the implementation of the national anticorruption strategy. The anti-corruption courts (PAC) were established in 2018 to hear all corruption-related cases – including economic and financial crimes - after an investigation by BIANCO or the gendarmerie. There are supposed to be PACs throughout the country, but the only one fully operational is in the capital. Madagascar also has a Financial Intelligence Unit (SAMIFIN) to carry out research and financial analysis related to money laundering. Transparency International Initiative Madagascar (TI-IM) has an office in the country working here since 2002. TI-IM, BIANCO, SAMIFIN, Police and Gendarmerie collaborate closely to bring cases to the courts.

The Rajoelina administration has prioritized the fight against corruption and has begun to prosecute major corruption cases. Between January and September 2019, 1,111 individuals were investigated, 421 arrested, and 78 were sent to prison for pre-trial detention.

During an investigation, bank accounts of family members (spouse, parents, children) can be investigated, but there is no provision or sanctions for family members of officials convicted of corruption.

There is no requirement for companies to establish internal codes of conduct that prohibit bribery of public officials. Both the anti-corruption law and the penal code prohibit any

individual/enterprise from giving money, presents, or other gifts to public officials to obtain advantages they are not entitled to. The law also provides that any private enterprise that commits corrupt practices to obtain a permit, license or authorization is excluded from government procurement. Furthermore, according to the law, any license, authorization, or permit issued illegally through corruption is void.

Both Article 31 of the 2016 anti-corruption law and Article 182 of the penal code require that any conflicts of interest concerning a public official should be declared to the supervising authority. Failure to do so can lead to between six months to two years of imprisonment, a fine varying from Ar 1,000,000 to Ar 50,000,000 or both. There is limited information on companies using internal controls, ethics, and compliance programs to detect and prevent bribery of government officials. However, some foreign companies have begun to orient their internal control, ethics, and compliance programs to prevent bribery, and the Foreign Corrupt Practices Act prohibits U.S. firms from engaging in such behavior

Madagascar ratified the United Nations Convention against Corruption, as well as the African Union Convention on Preventing and Combating Corruption, in 2004. Madagascar also joined the Southern African Development Community (SADC) Protocol against corruption in 2007, but has not yet signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transaction.

NGOs and associations are involved in governance and anti-corruption projects. The law does not have any explicit provisions protecting NGOs and associations. A Transparency International Initiative report states that although many associations and NGOs exist on paper, their actions are limited in terms of impact, especially in terms of playing a watchdog or advocacy role concerning government institutions. Environmental activists have been harassed and threatened by various means. The government, however, does not target them directly.

In general, the private sector identifies corruption as an obstacle to investment. The IMF country report on Madagascar published in 2017 indicates that corruption affects the business climate in Madagascar.<sup>iv</sup> Forty percent of those surveyed expected to give gifts "to get things done," or to get an operating license, or to secure a government contract. Moreover, 30 percent of the surveyed firms expected to give gifts in meeting tax officials and were required to make an informal payment or experienced a bribe payment request. Similarly, more than 75% of Malagasy stated that corruption had increased in Madagascar over the past year, according to the 2019 Afrobarometer Survey, with 44% of Malagasy believing that police and gendarmes are involved in corruption and 39% believing the same of judges and magistrates. BIANCO fared better with respect to the public's trust, with 87% believing it is somewhat or very probable that BIANCO would take action if they report an act of corruption. Nevertheless, of these respondents, 70% believe that regular citizens are at risk of retaliation if they report this. For exporters, many products require documentation linked to regulatory controls and this process can require a significant amount of time, costs, and possibly bribes. Aside from the routine

demands for a quid pro quo, close ties between business and political elites also present barriers to entry for newcomers to the field.

### *Resources to Report Corruption*

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## **10. Political and Security Environment**

Madagascar's political history is characterized by cyclical political unrest since its independence. The two most important events during the past two decades happened in 2002 and 2009. In 2002, the disputed presidential elections between Didier Ratsiraka and Marc Ravalomanana led to six months of social, political, and economic conflict before Ravalomanana took over as President of the Republic. In 2009, following violent public protests against widespread poverty and bad governance, Ravalomanana handed over power to a military directorate which installed Andry Rajoelina as President on March 17, 2009. Both times, the political crises drove Madagascar into an extended period of economic decline, further exacerbating poverty, malnutrition, and socio-economic problems.

In April 2018, the parliament adopted a new electoral law with provisions aimed at preventing both former Presidents Ravalomanana and Rajoelina from participating in the presidential elections. After weeks of protests by their supporters, the HCC ruled the disputed provisions unconstitutional. Two rounds of peaceful presidential elections took place in November and December 2018, following which Andry Rajoelina took office as President in January 2019. The elections of Rajaonarimampianina in 2013 and of Rajoelina in 2018 were the first two consecutive democratic transfers of power in Madagascar's history.

The 2009 coup was preceded by violent protests which damaged many factories and warehouses, and destroyed radio and TV stations. Looting and arson destroyed many businesses in downtown Antananarivo and other urban centers. The political turmoil had a secondary and more lasting impact on Madagascar's infrastructure. With foreign aid at a standstill, public investment also diminished leading to significant deterioration of Madagascar's transportation and energy infrastructure, erosion of environmental diversity, and contributed to an increase in food insecurity and levels of poverty. Total private investment dropped from 40.96 percent of GDP in 2008 to 23.42 percent of GDP in 2010.<sup>[i]</sup>

After the peaceful presidential transition in 2018, Madagascar held legislative elections in 2019 which also took place without incident. Though the opposition alleged fraud in the municipal elections in November 2019, there were no significant protests or acts of violence. So far, the government has been able to move its legislative agenda without significant opposition. The economic impact of COVID-19 pandemic bears watching as it is likely to cause significant unemployment, business closures, and strain the government's budget.

According to a 2019 report published by the commercial bank Société Générale, political instability, institutional weakness, and bad governance constitute obstacles to Madagascar's economic growth. Corruption and social instability remain a challenge for the Malagasy economy. The report points to rising insecurity in the south and risk of political violence in the country.<sup>v vi</sup>

## **11. Labor Policies and Practices**

Over 75 percent of the labor pool works in the informal sector, primarily agriculture. There are few reliable statistics available on unemployment, underemployment, and the split between skilled and unskilled labor. Madagascar has a significant pool of available labor, much of it

young given the demographics of this country of 25 million people. One recent report puts the underemployment rate for the 15 to 29 age group at over 75 percent.

The quality of Madagascar's labor is high and is frequently cited by private investors as a key attraction for the country; this is particularly so in the textile sector where Madagascar has a growing reputation in the production of high-end apparel at costs comparable or lower to major exporters in Asia. The World Bank notes high skill levels in technology and call center services offer areas for growth. Another factor to note is the brain drain of educated Malagasy seeking better economic opportunities in Mauritius, other parts of Africa, and in Europe.

The National Office for Employment and Vocational Training, within the Ministry of Labor, is tasked with increasing the availability of skilled labor. Officially launched in March 2019, the Malagasy Vocational Training Fund (FMFP) finances training for company employees as well as youth and adults from the informal sector in Madagascar. The FMFP's mission is to finance continuing vocational, pre-employment and soft skills training for workers. With the assistance of its technical and financial partners, the FMFP launched tailored training sessions for several sectors including building and construction; public works and infrastructure; rural development; information and communication technology; textiles - clothing and accessories; hotel-restaurant-travel; and equity (start-up, associations, cooperatives, and NGO).<sup>vii</sup>

In general, labor laws do not include requirements for investors to hire nationals. The mining sector is the exception where the LGIM gives preference to nationals, so long as they have the required skills and experience.

The labor code includes specific provisions protecting workers against abrupt dismissals, but it also allows the employer to lay off workers for economic reasons. In such a situation, the employer has the right to furlough employees for a maximum period of six-month period during which all salary and allowances are suspended. After the six months, if the activities do not resume, the employer is required to pay severance, including the unpaid salary. There is no unemployment insurance or other safety net for those who are laid-off or fired.

Madagascar does not have a history of waiving labor laws to attract or retain investment. The labor code covers private sector workers while civil servants and maritime workers have separate labor codes, and a specific law ruling EPZ companies includes provisions related to their workers' rights. EPZ labor contracts may differ in duration, restrictions on the employment of women during night shifts and the amount of overtime permitted.

The law provides that public and private sector workers may establish and join labor unions of their choice without prior authorization or excessive requirements. Essential workers, including seafarers, police, military, and firefighters, may not form unions. Unions generally operate independently from government and political parties. According to union representatives, about 20 percent of the formal sector has collective bargaining agreements, and collective bargaining rights are more readily exercised and respected in larger international firms, such as those in the telecommunications, mining and banking sectors. In EPZs and smaller local companies, employees tend to be more reluctant to make demands for fear of reprisals.

The labor law establishes labor dispute mechanisms, which proceed progressively from internal negotiation to outside mediation from the Ministry of Labor to arbitration or legal settlement through the competent courts. The labor inspectorate under the leadership of the Ministry of Labor is in charge of resolving disputes by negotiation between workers and employers.

In November 2019, the GOM suspended the activities of an Australian mining company named Base Toliara, exploiting ilmenite in southern Madagascar. The GOM took action on the basis of protests initiated by a group of local inhabitants who had opposed the project since 2014 on environmental, health, and livelihood impact on the local population.

In the Country Program for Decent Work for 2015 to 2019 (a joint ILO-GOM project), ILO notes weak respect for fundamental labor rights.<sup>viii</sup> These include infringement of social and labor-related laws, informal recruiting practices, and poor hygiene, security, and health standards. Due to extreme poverty and lack of opportunity, workers tend to accept poor working conditions. The use of child labor in the vanilla and mica industries is an ongoing issue that international organizations and NGOs are working with the GOM to address.

In 2019, Madagascar ratified six ILO conventions. The local office of ILO supported the government in identifying the necessary amendments to align the local legislation with the newly ratified conventions. A finalized summary of the suggested amendments was submitted to the National Labor Council<sup>ix</sup>

## **12. U.S. International Development Finance Corporation (DFC) and Other Investment Insurance Programs**

Given Madagascar's status as one of the poorest countries in the world, it is a perfect candidate for DFC programs and assistance. With the GOM prioritizing infrastructure investments and private sector-led economic growth, DFC's ability to offer reasonable rates on loans and/or political risk insurance will be invaluable. Madagascar's biodiversity is well-known and celebrated, but it is also under threat from illegal logging, smugglers, wildlife traffickers, and slash and burn agriculture. Projects that target sustainability and environmental protection will be even more important with COVID-19 displacement already creating numerous instances of increased incursions into protected areas and destruction of habitat.

On March 31, 1998, the Overseas Private Investment Cooperation (OPIC) and Madagascar signed a bilateral Investment Incentive Agreement, which updated the previous agreement signed in 1963. Additionally, OPIC and Madagascar concluded two memoranda of understanding in 2004 pledging cooperation in attracting U.S. investment in several sectors, including telecommunications and information technology, agribusiness, mining, energy, and tourism. However, there are currently no active OPIC projects in Madagascar. Madagascar has been a member of the Multilateral Investment Guarantee Agency (MIGA) since 1989.

### 13. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Please note that the following tables include FDI statistics from three different sources, and therefore will not be identical. Table 2 uses BEA data when available, which measures the stock of FDI by the market value of the investment in the year the investment was made (often referred to as historical value). This approach tends to undervalue the present value of FDI stock because it does not account for inflation. BEA data is not available for all countries, particularly if only a few US firms have direct investments in a country. In such cases, Table 2 uses other sources that typically measure FDI stock in current value (or, historical values adjusted for inflation). Even when Table 2 uses BEA data, Table 3 uses the IMF's Coordinated Direct Investment Survey (CDIS) to determine the top five sources of FDI in the country. The CDIS measures FDI stock in current value, which means that if the U.S. is one of the top five sources of inward investment, U.S. FDI into the country will be listed in this table. That value will come from the CDIS and therefore will not match the BEA data.

*Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy*

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) (\$M USD)	2017	\$13,176	2018	\$13,853	<a href="http://www.worldbank.org/en/country">www.worldbank.org/en/country</a>
Foreign Direct Investment	Host Country Statistical source*	USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other	
U.S. FDI in partner country (\$M USD, stock positions)	2015	450	2019	N/A	BEA data available at <a href="https://www.bea.gov/international/direct-investment-and-multinational-enterprises-comprehensive-data">https://www.bea.gov/international/direct-investment-and-multinational-enterprises-comprehensive-data</a>
Host country's FDI in the United States (\$M USD, stock positions)	2018	N/A	2019	N/A	BEA data available at <a href="https://www.bea.gov/international/direct-investment-and-multinational-enterprises-comprehensive-data">https://www.bea.gov/international/direct-investment-and-multinational-enterprises-comprehensive-data</a>

					UNCTAD data available at <a href="https://unctad.org/en/Pages/DIAE/World%20Investment%20Report/Country-Fact-Sheets.aspx">https://unctad.org/en/Pages/DIAE/World%20Investment%20Report/Country-Fact-Sheets.aspx</a> [Select country, scroll down to “FDI Stock”- “Inward”, scan rightward for most recent year’s “as percentage of gross domestic product”]
Total inbound stock of FDI as % host GDP	2015	67%	2015	N/A	

\* Source for Host Country Data: Central Bank and Institut National de la Statistique de Madagascar

*Table 3: Sources and Destination of FDI*

Madagascar is not listed in the IMF data on CDIS. So the table below shows data from Central Bank and Institut National de la Statistique de Madagascar (FY2015).

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations (US Dollars, Millions)					
Inward Direct Investment			Outward Direct Investment		
Total Inward		100%	Total Outward	Amount	100%
Mauritius	289	51.4%	Country #1	Amount	X%
France	111	19.7%	Country #2	Amount	X%
United States	68	12.0%	Country #3	Amount	X%
Swiss	23	4.0%	Country #4	Amount	X%
Luxemburg	15	2.6%	Country #5	Amount	X%
"0" reflects amounts rounded to +/- USD 500,000.					

*Table 4: Sources of Portfolio Investment*

Madagascar does not have a database on equity and debt securities. There is no stock market and corporates rarely offer their equity shares to the public. In addition, only companies and individuals with legal and permanent resident status can purchase Treasury bonds. Therefore, a breakdown per country on issued bonds is unavailable.

Portfolio Investment Assets								
Top Five Partners (Millions, current US Dollars)								
Total			Equity Securities			Total Debt Securities		
All Countries	Amount	100%	All Countries	Amount	100%	All Countries	Amount	100%
Country #1	Amount	X%	Country #1	Amount	X%	Country #1	Amount	X%
Country #2	Amount	X%	Country #2	Amount	X%	Country #2	Amount	X%

Country #3	Amount X%	Country #3	Amount X%	Country #3	Amount X%
Country #4	Amount X%	Country #4	Amount X%	Country #4	Amount X%
Country #5	Amount X%	Country #5	Amount X%	Country #5	Amount X%

## 14. Contact for More Information

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<sup>i</sup> <https://www.doingbusiness.org/en/rankings>

<sup>ii</sup> [www.investmentpolicy.unctad.org](http://www.investmentpolicy.unctad.org)

<sup>iii</sup> <https://slideplayer.fr/slide/1169362/>

<sup>iv</sup> Source IMF country report 17/224

<sup>v</sup> Source IMF World Economic Outlook Database

<sup>vi</sup> <https://import-export.societegenerale.fr/fr/fiche-pays/madagascar/risque-pays-economie>

<sup>vii</sup> [www.fmfp.mg](http://www.fmfp.mg)

<sup>viii</sup> [https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---ilo-antananarivo/documents/publication/wcms\\_461294.pdf](https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---ilo-antananarivo/documents/publication/wcms_461294.pdf)

<sup>ix</sup> [https://www.ilo.org/global/docs/WCMS\\_736101/lang--en/index.htm](https://www.ilo.org/global/docs/WCMS_736101/lang--en/index.htm)